IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Brevet Direct Lending – Short Duration Fund, L.P. , a Delaware limited partnership; and **FCS Advisors, LLC**, a Delaware limited company; Plaintiffs; v. **The State of Missouri** and **Doug Nelson**, in his official and individual capacities; Defendants.	Case No. 17-cv-4089 Jury Trial Demanded

COMPLAINT

Plaintiffs Brevet Direct Lending – Short Duration Fund L.P. ("Brevet Direct Lending") and FCS Advisors, LLC ("FCS") (together, "Plaintiffs"), for their Complaint against the State of Missouri ("Missouri") and Doug Nelson ("Nelson") (together, "Defendants"), in his official and individual capacities, hereby state and allege as follows:

INTRODUCTION

1. The facts of this case are straightforward. Brevet Direct Lending is an investment fund. It is managed by non-party Brevet Capital Management, LLC ("Brevet Capital Management"), which is its investment manager, and FCS, which is its administrative agent. Brevet Direct Lending is in the business of providing credit to privately held companies in need of financing. It has a special focus on lending that will support positive social and environmental impact with a special emphasis on supporting minority owned businesses and other companies

that provide benefits to minority communities. This type of lending is known as "impact lending."

2. Non-party EngagePoint, Inc. ("EngagePoint") was, in the fall of 2014, a privately held, minority-owned company in need of financing. At the time, EngagePoint was working as the "prime contractor" on a Missouri state project being managed for Missouri by Nelson. Nelson told EngagePoint that to continue its work as prime contractor, EngagePoint needed to secure access to additional liquidity (i.e., cash). EngagePoint therefore sought a credit facility from Brevet Direct Lending.

3. To evaluate EngagePoint's proposal for credit, Brevet Capital Management, as an agent of Brevet Direct Lending (and FCS), met with Nelson. During their meeting, Nelson made a series of representations to Brevet Capital Management designed to induce Plaintiffs to issue EngagePoint a multi-million dollar credit facility. Chief among these representations was Nelson's representation that his and Missouri's present intentions were to keep EngagePoint as the prime contractor under its existing, highly valuable, multi-year contract, to extend that contract, and to pay EngagePoint the tens of millions of dollars of contractual payments that EngagePoint was and would be due.

4. On the strength and basis of these representations, Brevet Direct Lending extended a $20 million credit facility to EngagePoint. FCS simultaneously agreed to act as the administrative agent and servicer for the credit facility.

5. Soon after the credit facility was extended and EngagePoint had used the proceeds to pay various subcontractors and suppliers that were also working on the state project, Missouri and Nelson radically changed their tune. They began to systematically undermine EngagePoint and its work on the System Project and ultimately terminated EngagePoint. They also refused,

and continue to refuse, to pay EngagePoint approximately $37 million it is owed for work already completed. This misconduct not only required increasing the size of the credit facility to EngagePoint, but it also prevented EngagePoint from paying any of it back. It also prevented EngagePoint from paying over $80,000 in fees it owes to FCS for its work as administrative agent.

6. On these facts, Brevet Direct Lending bring claims for fraudulent inducement, negligent misrepresentation, and unjust enrichment. Further, because Missouri's and Nelson's misconduct was motivated at least in part by racial animus towards EngagePoint's Asian-Indian American owners and managers, and Brevet Direct Lending's association and partnership with them, it also brings discrimination claims under Title VI and Section 1981. Finally, FCS brings fraudulent inducement and negligent representations claims related to its lost administrative agent fees as well as Title VI and Section 1981 claims for discrimination.

PARTIES, JURISDICTION, AND VENUE

7. Brevet Direct Lending is a limited partnership organized and existing under the laws of Delaware. Its general partner is Brevet Short Duration Partners, LLC, a Delaware LLC, and its investment manager is Brevet Capital Management, another Delaware LLC. None of the members of Brevet Short Duration Partners, LLC or Brevet Capital Management are Missouri citizens.

8. FCS is a limited liability company organized and existing under the laws of Delaware. Its principal place of business is in New York. It has one member, which is another Delaware LLC that itself has two members, both of which are citizens of New York.

9. Since their inception, Plaintiffs, in part through their agents, affiliates, and managers, have been in the business of impact lending in various capacities, including as lenders,

agents, and advisors. They have provided resources to a variety of minority-owned companies, like EngagePoint, and other companies that seek to benefit minority communities.

10. One way that Plaintiffs accomplish their goals of assisting minority-owned companies is by working closely with the owners and principals of those companies, like EngagePoint, to maximize their ability to achieve their visions of beneficial social impact. Plaintiffs also maintain a portfolio of impact transactions that enable minority-owned and other companies to provide education, energy, sustainability, financial inclusion, health services, and infrastructure development benefits to the communities they serve throughout the United States.

11. The credit facility at issue in this case is a key part of Plaintiffs' impact portfolio.

12. Defendant Missouri is a body politic organized and existing under the Missouri Constitution and the United States Constitution.

13. Missouri acted by and through its, agents, employees, and assigns, including the Department of Social Services and the Office of Administration, both of which are state administrative agencies created under the Missouri Constitution and Statutes.

14. Nelson is a citizen and resident of the State of Missouri. While at all relevant times Nelson was the Commissioner of the Office of Administration, Nelson is sued here in both his official and individual capacities. In the claims against Nelson in his individual capacity, Plaintiffs allege that Nelson acted outside of the scope of his official duties to promote his personal agenda. This personal agenda included intentionally inducing Plaintiffs to issue a multi-million dollar credit facility to EngagePoint by making false representations to Plaintiffs in willful, malicious, and bad faith disregard of their falsity.

15. Jurisdiction is proper under 28 U.S.C. § 1331 because Plaintiffs assert federal claims against Nelson and Missouri. Plaintiffs' remaining state law claims are part of the same

case or controversy as the federal claims and thus supplemental jurisdiction over them is proper under 28 U.S.C. § 1367(a).

16. Missouri waived its Eleventh Amendment immunity to suit through its conduct and receipt of substantial federal funds in connection with the events at issue.

17. Venue is proper under 28 U.S.C. § 1391(b) because Defendants' conduct occurred in pertinent part in and around Jefferson City, Missouri; Missouri's administrative offices are located in Cole County, Missouri; and the administrative offices' principal official duties are performed in Cole County, Missouri.

GENERAL ALLEGATIONS OF FACT

Non-Party EngagePoint and its Contract with Missouri to Develop the "System"

18. In January 2013, the Missouri Office of Administration issued a request for proposals ("RFP"), attached here as Exhibit A, for the "provision and implementation of a comprehensive, fully integrated, state-of-the-art automated human services eligibility, enrollment and case management system for the Missouri Department of Social Services" (the "System"). (Ex. A ¶ 1.1.1.)

19. The RFP described the impetus and vision for development of the System (the "System Project") as follows:

> i. "The [federal] Patient Protection and Affordable Care Act (ACA) … changes the health coverage landscape in a number of fundamental ways, including through the development of Health Benefit Exchanges (Exchanges). The ACA further requires the establishment of a single integrated process to determine consumer eligibility for all coverage options and subsidies, including Medicaid and the Children's Health Insurance Program (CHIP)." (Ex. A ¶ 1.5.1.)

ii. “Since September 2010, Missouri has significantly advanced its planning for complying with requirements of the ACA. Missouri engaged in a number of planning and analysis activities in order to determine both the technical and business functions of the eligibility and enrollment platform and to identify opportunities to leverage current systems. Missouri’s existing IT systems are built on technology ranging from 20-year old transaction-based systems operating on mainframes to three tier web-based systems. The overall outcome of these analyses was that no single system provides comprehensive coverage to meet technical requirements. To that end, Missouri has developed the following vision:

a. Defer to the implementation of a federally facilitated exchange . . . .

b. Develop a technology enabled, user-friendly, consumer-centric eligibility and enrollment process to leverage and integrate, as appropriate, existing administrative and technical infrastructure for the State’s Medicaid and CHIP programs as well as for other human service programs administered by the Department of Social Services; and

c. Build the interfaces necessary to exchange information with the federal facilitated exchange, federal and state agencies and data hubs.” (Ex. A ¶ 1.5.2.)

iii. As a result, the RFP summarized: “The State desires to build a modern eligibility and enrollment platform for use across multiple agencies of state government.” (*Id.* ¶ 1.5.6.)

iv. The System Project was to be completed in three phases – Phases I, II, and III. (*Id.* ¶ 2.1.3.)

20. Funding for the System Project was to come from "a variety of sources, including a cooperative agreement with the Center for Consumer Information and Insurance Oversight (CCIIO), Medicaid enhanced funding in accordance with proposed rule 42 CFR part 433, other state and federal funding sources in support of the human services programs and grants from private foundations." (*Id.* ¶ 1.5.9.) More specifically, the RFP said, "[t]he State intends to utilize the Enhanced Federal Financial Participation for Medicaid Eligibility and Enrollment System available through December 31, 2015." (*Id.*)

21. In fact, because development and implementation of the System was to be part of a Federal Funds Participation Program ("FFP"), Missouri was eligible for federal funding of up to 90%. To obtain this federal funding, Missouri needed only to comply with the federal standards and review requirements set forth by the Centers for Medicare & Medicaid Services ("CMS"), which is part of the Federal Department of Health and Human Services.

22. In March 2013, EngagePoint submitted its proposal to serve as the prime contractor for the System Project.

23. EngagePoint is a Florida corporation with a principal place of business in Maryland. Its primary focus is to design and build the software and information technology platforms that health and human services agencies and providers use to serve their constituents.

24. As will become relevant, key members of EngagePoint's management team and ownership are Asian-Indian Americans.

25. In June 2013, Missouri announced that EngagePoint's proposal had been accepted over those of its competitors, including IBM.

26. EngagePoint thus became the prime contractor for the design, development, and implementation of the System.

27. Though the System was, in the first instance, for Missouri's Department of Social Services, EngagePoint's contract for the System Project was with Missouri. (Ex. A at 1.)

28. The contract required federal CMS approval to become effective. (*See id.* ¶ 1.1.2.) CMS provided its approval and the contract was effectuated.

29. The contract was to last through June 30, 2018. (*Id.* at 1.) The total contract value was $147 million.

30. The contract's value, and more specifically the payments to EngagePoint specified by the contract, accounted for the fact that to build the System, EngagePoint would need to engage a variety of specialty subcontractors and other suppliers and to pay them on an ongoing basis.

Missouri's Waiver of Eleventh Amendment Immunity

31. Because it is part of an FFP, Missouri has been and is entitled to federal financial assistance for up to 90% of the cost of the System Project. To date, Missouri has received financial assistance totaling many millions of dollars.

32. As part of an FFP, the System Project is subject to the federal standards and review requirements administered by CMS.

33. Part of these standards and requirements entitle Missouri to appeal adverse decisions and determinations by CMS to the federal Departmental Appeals Board using the procedures specified in 45 C.F.R. Part 16. Final decisions of the Departmental Appeals Board can be appealed to federal court.

34. As a result, participants in Federal Fund Participation Programs like the System Project consent to federal jurisdiction over related disputes when they accept federal funding.

35. Missouri (and/or its sub-divisions) has availed itself of these procedures on numerous occasions in analogous circumstances. *See*, *e.g.*, Missouri Department of Social Services, Docket No. A-15-93, Decision No. 2677 (February 11, 2016); Missouri Department of Social Services, Docket No. A-14-15, Decision No. 2589 (September 4, 2014); Missouri Department of Social Services, Docket No. A-13-29, Decision No. 2546 (December 3, 2013), Missouri Department of Social Services, Docket No. A-05-101, Decision No. 2184 (July 11, 2008); Missouri Department of Social Services, Docket No. 91-124, Decision No. 1304 (February 21, 1992).

36. As a result of its participation in the FFP and its agreement to avail itself of federal jurisdiction in the event of a dispute, Missouri has waived Eleventh Amendment immunity for disputes relating to the System Project.

37. Missouri has also waived its Eleventh Amendment immunity, as provided for in 42 U.S.C. §2000d(a), by accepting federal funds for the System Project.

38. Finally, Missouri has waived its Eleventh Amendment immunity by entering into a contract with EngagePoint that waived immunity with respect to any claims arising out of or related to the contract. The claims in this lawsuit would not exist but for Missouri's contract with EngagePoint.

Nelson's Management

39. EngagePoint's contract to build the System was managed for Missouri by Nelson. In addition to being the then-Commissioner of the Office of Administration, Nelson was a former chief of staff to then-Governor Jay Nixon. Nelson is a close confidant of, and has worked closely with, Governor Nixon for more than two decades.

40. To run the System, and despite the misgivings and recommendations of EngagePoint, Missouri and Nelson elected to license directly from IBM an IBM software program called Curam.

41. Unfortunately, those involved with the System Project, as EngagePoint had warned Nelson and Missouri would happen, soon came to recognize that Curam was causing multiple problems due to, *inter alia*, gaps in its functionality.

42. Problems with Curam were also regularly encountered in other states that were using it in similar projects. Unlike what occurred in other states using Curam, however, EngagePoint was able to craft timely solutions for Curam's deficiencies.

43. Nonetheless and notwithstanding EngagePoint's superlative efforts, in the Fall of 2014, following issues culminating in certain subcontractors walking off the System Project, Missouri, through Nelson, changed the mechanics by which EngagePoint was to be paid for its work.

44. Missouri made no further payments after this change. It paid EngagePoint neither the amounts due it under its contract nor the amounts due it for extra work that EngagePoint was performing as a result of new issues that had arisen and changes made to the System Project by Nelson, Missouri, and CMS. The amounts owed to EngagePoint and wrongfully withheld would ultimately reach in excess of $37,000,000.

45. As a result of Defendants' refusal to make any payments, EngagePoint became unable to pay its subcontractors and suppliers on time. Many of these subcontractors and suppliers were also doing, or were likely to do in the future, work for Missouri on other projects.

46. In response to growing payment issues, Nelson promised EngagePoint that it would be paid the amounts it was due, including the amounts due for its work to address the new issues with and changes to the System Project that had arisen after it began.

47. Nelson also represented to EngagePoint, in the Fall of 2014, that EngagePoint was performing well and was, with one caveat discussed immediately below, certain to secure additional work for Phases II and III of the System Project. By way of background, on information and belief, EngagePoint's contract had left Phase III work to the discretion of Missouri (*see* Ex. A ¶ 2.1.3.) and the parties had not agreed to amended payment terms for Phase II.

48. In furtherance of Nelson's representations to EngagePoint, Nelson authorized EngagePoint to begin work on Phase II.

Nelson Induces Plaintiffs to invest in EngagePoint /
The December 5, 2014 Conference Call

49. At the same time, the Fall of 2014, when Nelson led EngagePoint to believe, in words or substance, that it would be paid the amounts it was owed, Nelson also led EngagePoint to believe, in words or substance, that for it to be awarded additional work on the System Project, it needed to improve its access to liquidity (i.e., cash).

50. EngagePoint was having cash flow issues at the time, which was impacting its ability to, *inter alia*, pay its subcontractors and supplier. This fact was well known to Missouri and Nelson in the Fall of 2014. These cash flow issues were caused primarily if not entirely by (a) changes to and expansion of the scope of EngagePoint's work on the System Project, and (b) Missouri's failure to pay the amounts it owed EngagePoint for the work it had already completed.

51. As a result, in October 2014, EngagePoint contacted Brevet Capital Management about obtaining a loan from Brevet Direct Lending. Specifically, EngagePoint sought an initial credit facility of approximately $20 million.

52. To establish its creditworthiness and as a condition precedent to any decision by Plaintiffs to extend any credit facility, Brevet Capital Management, on behalf of Plaintiffs and after most of the due diligence process had been completed, needed to confer with Nelson, the individual most knowledgeable about the ongoing relationship between EngagePoint and Missouri.

53. Through the efforts of EngagePoint, a conference call between Nelson and Brevet Capital Management was scheduled for December 5, 2014.

54. Prior to the December 5, 2014 conference call, an agenda, attached here as Exhibit B, was sent to Nelson. The agenda listed the topics that Brevet Capital Management, on behalf of Plaintiffs, needed to address during the call. Those topics included, *inter alia*, procurement, funding, and outlook for the System Project, Missouri's relationship and history with EngagePoint, Missouri's contract with EngagePoint, Missouri's level of satisfaction with EngagePoint's performance to date, and Missouri's intentions with regard to EngagePoint going forward.

55. Peter Sherman and Robert Erb were on the conference call for Brevet Capital Management and on behalf of Plaintiffs. Nelson was the only individual acknowledged to be on the call for Missouri.

56. The conference call took place as scheduled and lasted approximately one hour.

57. At all relevant times prior to and during the conference call, Nelson knew or should have known that Brevet Capital Management and/or its affiliates (namely, Plaintiffs)

were conducting a due diligence investigation to determine whether to extend a multi-million dollar credit facility to EngagePoint. Nelson likewise knew or should have known that whatever he told Brevet Capital Management would be conveyed to and relied upon by Plaintiffs in making any decisions regarding the potential credit facility.

58. During the conference call, Nelson led Brevet Capital Management to believe, in words or substance, that EngagePoint was performing well on Phase I of the System Project and was likely to continue working on Phases II and III so long as its access to liquidity improved. As such, Nelson led Brevet Capital Management to believe by his conduct and comments that his present intent was to continue to use EngagePoint as the prime contractor on all Phases of the System Project.

59. Nelson further led Brevet Capital Management to believe, in words or substance, that given EngagePoint's existing involvement with the System Project as the prime contractor, it would not be necessary for Missouri to solicit bids from other contractors or otherwise issue an RFP for completion of Phases II and III. Instead, that work would flow naturally to EngagePoint without the need for additional bidding. As such, Nelson led Brevet Capital Management to believe by his conduct and comments that his present intent was to continue to use EngagePoint as the prime contractor all Phases of the System Project.

60. Nelson also led Brevet Capital Management to believe, in words or substance, that he was extremely confident that all three phases of the System Project would be fully funded and would be completed as planned. Nelson did so based on: (i) his represented knowledge of the low political risk that the System Project would be de-funded, and (ii) his assessment as Commissioner that the System was not part of what was often contentiously viewed as an insurance exchange or "Obamacare". As such, Nelson led Brevet Capital Management to believe

by his conduct and comments that his present intent was to continue to use EngagePoint as the prime contractor on all Phases of the System Project and to pay EngagePoint fully for its work.

61. Nelson further led Brevet Capital Management to believe by his conduct and comments that as of December 5, 2014, EngagePoint was already performing work on Phase II.

62. As indicated above, the ultimate thrust of Nelson's statements and representations, when taken in the context of the nature and circumstances of the December 5, 2014 conference call, was that Missouri's present intent was to continue to use EngagePoint as the prime contractor for the System Project and to pay EngagePoint fully for its work.

63. Nelson made these representations with the intent that they would be relied on by Brevet Capital Management and, by extension, Plaintiffs. Brevet Capital Management conveyed these representations to Plaintiffs.

64. Nelson was motivated by his overriding personal and/or professional need at the time to make sure that EngagePoint had enough access to liquidity to continue its work on the System Project and to make ongoing payments to its subcontractors and suppliers without Missouri having to make additional payments to EngagePoint—none of which Nelson disclosed.

65. Because of his direct involvement with EngagePoint and his direction of the System Project, Nelson possessed significant non-public information regarding the relationship between EngagePoint and Missouri. He knew that, as a result, his representations to Brevet Capital Management would be heavily relied on and he made his representations with the intent to induce such reliance.

66. Nelson never indicated, at any time material to the December 5, 2014 conference call, that his representations could not or should not be relied on. Nor did Nelson ever suggest that he lacked authority to make these representations on behalf of Missouri or the Office of

Administration. To the contrary, Nelson's actions and position of authority led Plaintiffs reasonably to believe that he had the authority to make representations on behalf of Missouri and the Office of Administration.

67. Nelson made his representations knowing they were false or materially misleading.

68. At the time of the December 5, 2014 conference call, Nelson knew, *inter alia*, that although EngagePoint was doing some Phase II work, that work either would cease, or a significant possibility existed that Nelson would soon order EngagePoint to stop that work. Nelson did not disclose any of these facts to Brevet Capital Management or Plaintiffs.

69. At the time of the conference call, Nelson also knew that EngagePoint would be, or was likely to be, evaluated and replaced shortly on the System Project by IBM. Nelson did not disclose these facts to Brevet Capital Management or Plaintiffs.

70. At the time of the conference call, Nelson also knew that EngagePoint would be, or was likely to be, terminated from the System Project entirely. Nelson did not disclose these facts to Brevet Capital Management or Plaintiffs.

71. At the time of the conference call, Nelson also knew that EngagePoint had not been paid in full for its completed work and that he did not intend to authorize future payments to EngagePoint for any work that he deemed to be outside the original contract. He also knew at the time that payments for ongoing and future work otherwise due to EngagePoint by Missouri would be withheld. Nelson did not disclose these facts or his intentions to Brevet Capital Management or Plaintiffs.

72. Nelson withheld these facts because it was important to him that EngagePoint's access to liquidity be improved and that his true intentions not be disclosed as he knew that if the truth were disclosed, the credit facility being discussed would not be extended.

73. Nelson needed Plaintiffs to provide EngagePoint with a substantial infusion of cash so that it could continue to maintain a high level of performance on the System Project (without Missouri having to pay EngagePoint for continuing such performance) and to pay its various subcontractors and suppliers. Nelson did not want any non-payment by EngagePoint to its subcontractors or suppliers to cause either a work stoppage on the System Project or to interfere with their work on other on-going or future projects for Missouri.

74. Given Missouri's refusal to pay EngagePoint, Nelson knew that if EngagePoint did not obtain a substantial infusion of cash, EngagePoint would be unable to pay its subcontractors and suppliers. Those subcontractors and suppliers would therefore be likely to stop work and thus jeopardize all progress on the System Project.

75. Nelson also failed to disclose that he and other of Missouri's employees and agents overseeing the System Project harbored a racial animus towards the Asian-Indian American members of EngagePoint's management team.

76. Plaintiffs are informed and believe that EngagePoint's Asian-Indian American management believe they were discriminated against by Nelson, particularly in contrast to others, through Nelson's statements and pattern of behavior.

77. At all times relevant to their decisions regarding extending a credit facility to EngagePoint, Brevet Capital Management and Plaintiffs had no knowledge of the undisclosed facts described above or of Nelson's personal racial animus towards the management of EngagePoint.

78. To the contrary, Plaintiffs reasonably relied on Nelson's representations that EngagePoint was performing well on the System Project, that it was to be paid for its work to date on Phases I and II, and that it would continue as the prime contractor on Phases II and III once EngagePoint secured a credit facility.

79. On the basis of Nelson's representations, Brevet Direct Lending issued an initial $20 million credit facility to EngagePoint in December 2014. FCS also agreed to serve as administrative agent and servicer of the credit facility in exchange for a monthly $4,000 fee to be paid by EngagePoint. From time to time, this credit facility was increased to address EngagePoint's additional cash flow needs created by Defendants' ongoing and total refusal to pay EngagePoint any amounts due. Currently, the total credit extended to EngagePoint exceeds $60 million. The total credit extended is referred to below as the "Investment."

80. To date, EngagePoint has been unable to pay back the amounts it owes Plaintiffs on the Investment. This is a direct result of Defendants' refusal to pay EngagePoint—despite EngagePoint's repeated demands—the monies lawfully owed to EngagePoint under its contract with Missouri.

81. To date, EngagePoint has also been unable to pay FCS over $80,000 that it owes FCS for its work as administrative agent, which includes acting as loan servicer. This too is a direct result of Defendants' actions.

Nelson Terminates EngagePoint from work on the System

82. On information and belief, EngagePoint, believing that Missouri would pay it the amounts due it under the parties' contract, among other monies, used the proceeds from the Investment to pay subcontractors, suppliers and to continue work on the System Project.

83. Unfortunately, soon after the initial credit facility was extended to EngagePoint in late December 2014, Nelson and Missouri embarked on a course of conduct entirely inconsistent and contrary to Nelson's statements and representations during the December 5, 2014 conference call.

84. In January 2015, Nelson caused the termination of EngagePoint's work on Phase II of the System Project.

85. Around the same time, Nelson and Missouri directed IBM to evaluate the work being performed by EngagePoint for the ostensible purpose of "recommending" a company to replace EngagePoint on the System Project. All along, however, Nelson expected IBM to recommend itself as EngagePoint's replacement. Nelson was in fact motivated by a personal desire to curry favor with IBM and to bolster his personal reputation with Missouri and others, including IBM.

86. In May 2015, Nelson caused the termination of EngagePoint's contract with Missouri.

87. Almost immediately after EngagePoint was terminated from the System Project, Nelson caused IBM to be installed as EngagePoint's replacement.

88. In doing so, Nelson hired away at least one EngagePoint employee to help oversee IBM's work on the System Project. The employee that Nelson hired was a white male. After hiring this employee, Nelson disclosed that the reason he had caused the termination of EngagePoint was because he wanted to get away from Pradeep Goel. Pradeep Goel was EngagePoint's CEO at the time and, like many of EngagePoint's managers and owners at the time, is Asian-Indian American.

89. Relatedly, Missouri, by and through Nelson and other agents and employees, purported to hire IBM under the emergency exception to state procurement laws. Yet nothing in the status of the System Project met the statutory criteria for allowing Missouri or Nelson to execute an emergency "procurement" of the System through IBM. Missouri and Nelson exceeded their statutory authority by replacing EngagePoint with IBM.

90. Missouri is now paying IBM substantially more than it contracted to pay EngagePoint, contrary to Missouri law regarding government contracts.

91. Notwithstanding these facts, following EngagePoint's termination, EngagePoint in good faith continued to work amicably with IBM to manage the transition with the expectation that it would be paid for its services as had been represented by Nelson.

92. Despite these representations, Nelson and Missouri continued, and continue through the present, to refuse to pay EngagePoint the approximately $37 million that it is owed for its work on the System Project, work for which Missouri received substantial benefit.

93. In contrast, to maintain his "special" relationship with IBM and to complete IBM's plan to replace EngagePoint on the System Project, Nelson caused an additional $2 million to be funneled to IBM for its pre-May 2015 work. This work consisted largely of IBM establishing a purported basis for recommending itself to replace EngagePoint.

94. In August 2015, Nelson provided the Missouri House Budget Committee with the pretext for his decision to terminate, or cause the termination of, EngagePoint. Nelson represented to the Committee that EngagePoint had been terminated primarily because of a failure to fix a functionality issue that had resulted from defects in IBM's Curam software.

95. Nelson's representation to the House Budget Committee was false. In fact, at the time of EngagePoint's termination, EngagePoint had effectively solved the functionality issue.

Further, IBM continues to use EngagePoint as a subcontractor to deal with other issues with Curam.

96. As a result of the conduct described above, EngagePoint has been unable to repay the Investment, the total amount of which has continually grown as EngagePoint has needed additional cash to remain solvent and operational. The total Investment now exceeds $60 million.

97. In addition, as a result of Defendants' actions, EngagePoint has also been unable to pay FCS for its work as administrative agent and loan servicer. To date, the amount owed exceeds $80,000 and continues to accrue on a monthly basis.

COUNT I
Fraudulent Inducement
By Brevet Direct Lending
Against Missouri and Nelson in his Official Capacity

98. The facts and allegations contained in the paragraphs 1-97 above are incorporated herein by reference.

99. Notwithstanding the incorporation of the facts and allegations contained in the paragraphs above, Count I is pled in the alternative to Counts II, III, and IV. For purposes of Count I, references to "Missouri" mean Missouri and/or Nelson in his official capacity.

100. Missouri, acting through Nelson and/or other of its employees and agents, fraudulently induced Brevet Direct Lending to make the Investment in EngagePoint.

101. Once Missouri agreed to respond to the due diligence agenda topics submitted in advance of the December 5, 2014 conference call, it owed Brevet Direct Lending the duties of honesty, full disclosure, due care, and good faith.

102. Missouri breached these duties.

103. As detailed above, the ultimate thrust of Missouri's statements and representations, when taken in the context of the nature and circumstances of the December 5,

2014 conference call, was that Missouri's present intent was to continue to use EngagePoint as the prime contractor for the System Project and to pay EngagePoint fully for its work.

104. This conclusion was based on, *inter alia*, Missouri's representations that given EngagePoint's existing involvement with the System Project as the prime contractor, it would not be necessary for Missouri to solicit bids from other contractors or otherwise issue an RFP for completion of Phases II and III. Instead, that work would flow naturally to EngagePoint without the need for additional bidding.

105. Missouri made these representations knowing they were false at the time they were made or at the very least were intentionally misleading.

106. Missouri made these representations intending Brevet Direct Lending to rely on them in deciding whether to extend a credit facility to EngagePoint.

107. Missouri urged Brevet Direct Lending to invest in EngagePoint so that other subcontractors and suppliers to the System Project would be paid by EngagePoint thereby ensuring that their work on the System Project and on other Missouri projects would be unaffected by Missouri's non-payment. Missouri further urged Brevet Direct Lending to invest in EngagePoint to ensure that EngagePoint had sufficient operating capital to continue the System Project. As Missouri had, prior to December 5, 2014, told EngagePoint that it needed to improve its access to liquidity, Missouri was familiar with EngagePoint's financial condition and knew or should have known on December 5, 2014 that the revenue from Missouri on the System Project constituted the overwhelming majority of EngagePoint's capital and income.

108. At no time did Missouri tell Brevet Direct Lending that it could not and should not rely on Missouri's representations. To the contrary, Missouri actively sought to create the reasonable inference from its statements and representations that the operational risk to

EngagePoint from the System Project not being completed was minimal and that the possibility of EngagePoint not continuing as the prime contractor was remote. Missouri's statements and representations on December 5, 2014 were such that the logical and reasonable conclusion was that EngagePoint would be paid many millions of dollars by Missouri for work on the System Project and thus EngagePoint was sufficiently creditworthy to warrant the extension of the desired credit facility.

109. On the basis of Missouri's representations, Brevet Direct Lending extended the initial portion of the Investment to EngagePoint in December 2014. Thereafter from time to time, Brevet Direct Lending increased the size of the Investment to address additional EngagePoint cash flow needs created by Missouri's total refusal to pay EngagePoint for the work it had completed. Currently, the total Investment exceeds $60 million.

110. Missouri's false representations were made maliciously and in bad faith for the purpose of inducing Brevet Direct Lending to extend a credit facility to EngagePoint.

111. No credit facility would have been extended but for the representations that were made to Brevet Direct Lending by Missouri on December 5, 2014.

112. Brevet Direct Lending has suffered substantial damage from Missouri's false and misleading representations.

113. As a result of the conduct described above, EngagePoint has been unable to pay Brevet Direct Lending over $60 million of interest and principal that is past due on the Investment.

WHEREFORE, Brevet Direct Lending prays for judgment against the State of Missouri and Doug Nelson in his official capacity on Count I for fair and reasonable damages, punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT II
Fraudulent Inducement
By Brevet Direct Lending
Against Nelson in his Individual Capacity

114. The facts and allegations contained in the paragraphs 1-97 above are incorporated herein by reference.

115. Notwithstanding the incorporation of the facts and allegations contained in the paragraphs above, Count II is pled in the alternative to Counts I, III, and IV.

116. Nelson, ostensibly acting as the Commissioner of Administration but in reality acting outside of the scope of official duties and in service of his personal agenda, fraudulently induced Brevet Direct Lending to make the Investment in EngagePoint.

117. Once Nelson agreed to respond to the due diligence agenda topics submitted in advance of the December 5, 2014 conference call, he owed Brevet Direct Lending the duties of honesty, full disclosure, due care, and good faith.

118. Nelson breached these duties.

119. As detailed above, the ultimate thrust of Nelson's statements and representations, when taken in the context of the nature and circumstances of the December 5, 2014 conference call, was that Nelson's present intent was to continue to use EngagePoint as the prime contractor for the System Project and to ensure that EngagePoint was fully paid for its work.

120. This conclusion was based on, *inter alia*, Nelson's representations that given EngagePoint's existing involvement with the System Project as the prime contractor, it would not be necessary for Missouri to solicit bids from other contractors or otherwise issue an RFP for

completion of Phases II and III. Instead, that work would flow naturally to EngagePoint without the need for additional bidding.

121. Nelson made these representations knowing they were false at the time they were made or at the very least were intentionally misleading.

122. Nelson made these representations intending Brevet Direct Lending to rely on them in deciding whether to extend a credit facility to EngagePoint.

123. Nelson urged Brevet Direct Lending to invest in EngagePoint so that other subcontractors and suppliers to the System Project would be paid by EngagePoint thereby ensuring that their work on the System Project and on other Missouri projects would be unaffected by Missouri's non-payment. Nelson further urged Brevet Direct Lending to invest in EngagePoint to ensure that EngagePoint had sufficient operating capital to continue the System Project. As Nelson had, prior to December 5, 2014, told EngagePoint that it needed to improve its access to liquidity, Nelson was familiar with EngagePoint's financial condition and knew or should have known on December 5, 2014 that the revenue from Missouri on the System Project constituted the overwhelming majority of EngagePoint's capital and income.

124. Nelson was motivated by, *inter alia*, a personal desire to advance his own career and standing among various state and private actors, including IBM, at the expense of FCS, EngagePoint, and the best interests of Missouri. Nelson's conduct was willfully wrong and corrupt.

125. At no time did Nelson tell Brevet Direct Lending that it could not and should not rely on his representations. To the contrary, Nelson actively sought to create the reasonable inference from his statements and representations that the operational risk to EngagePoint from the System Project not being completed was minimal and that the possibility of EngagePoint not

continuing as the prime contractor was remote. His statements and representations on December 5, 2014 were such that the logical and reasonable conclusion was that EngagePoint would be paid many millions of dollars by Missouri for work on the System Project and thus EngagePoint was sufficiently creditworthy to warrant the extension of the desired credit facility.

126. On the basis of Nelson's representations, Brevet Direct Lending extended the initial portion of the Investment to EngagePoint in December 2014. Thereafter from time to time Brevet Direct Lending increased the size of the Investment to address additional EngagePoint cash flow needs created by Defendants' total refusal to pay EngagePoint for the work it had completed. Currently, the total Investment exceeds $60 million.

127. Nelson's false representations were made maliciously and in bad faith for the purpose of inducing Brevet Direct Lending to extend a credit facility to EngagePoint.

128. No credit facility would have been extended but for the representations that were made to Plaintiffs by Nelson on December 5, 2014.

129. Brevet Direct Lending has suffered substantial damage from Nelson's false and misleading representations.

130. As a result of the conduct described above, EngagePoint has been unable to pay Brevet Direct Lending over $60 million of interest and principal that is past due on the Investment.

WHEREFORE, Plaintiffs pray for judgment against Doug Nelson in his individual capacity on Count II for fair and reasonable damages, punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT III
Negligent Misrepresentation
By Brevet Direct Lending
Against Missouri and Nelson in his Official Capacity

131. The facts and allegations contained in the paragraphs 1-97 above are incorporated herein by reference.

132. Notwithstanding the incorporation of the facts and allegations contained in the paragraphs above, Count III is pled in the alternative to Counts I, II, and IV. For purposes of Count III, references to "Missouri" mean Missouri and/or Nelson in his official capacity.

133. Missouri, acting through Nelson and/or other of its employees and agents, negligently induced Brevet Direct Lending to make the Investment in EngagePoint.

134. Once Missouri agreed to respond to the due diligence agenda topics submitted in advance of the December 5, 2014 conference call, it owed Brevet Direct Lending the duties of honesty, full disclosure, due care, and good faith.

135. Missouri breached those duties.

136. As detailed above, the ultimate thrust of Missouri's statements and representations, when taken in the context of the nature and circumstances of the December 5, 2014 conference call, was that Missouri's present intent was to continue to use EngagePoint as the prime contractor for the System Project and to pay EngagePoint fully for its work.

137. This conclusion was based on, *inter alia*, Missouri's representations that given EngagePoint's existing involvement with the System as the prime contractor, it would not be necessary for Missouri to solicit bids from other contractors or otherwise issue an RFP for completion of Phases II and III. Instead, that work would flow naturally to EngagePoint without the need for additional bidding.

138. At the time that Missouri made these representations, it knew or should have known that they were false or misleading, or at the very least, knew or should have known that there was a substantial possibility that they would turn out to be false.

139. Missouri's representations were made in bad faith and with malice. Either Missouri knew them to be false or misleading or Missouri purposely concealed and failed to disclose its ignorance of the facts upon which the representations were based.

140. Missouri made these representations intending Brevet Direct Lending to rely on them in deciding whether to extend a credit facility to EngagePoint.

141. Missouri urged Brevet Direct Lending to invest in EngagePoint so that other subcontractors and suppliers to the System Project would be paid by EngagePoint thereby ensuring that their work on the System Project and on other Missouri projects would be unaffected by Missouri's non-payment. Missouri further urged Brevet Direct lending to invest in EngagePoint to ensure that EngagePoint had sufficient operating capital to continue the System Project. As Missouri had, prior to December 5, 2014, told EngagePoint that it needed to improve its access to liquidity, Missouri was familiar with EngagePoint's financial condition and knew or should have known on December 5, 2014 that the revenue from Missouri on the System Project constituted the overwhelming majority of EngagePoint's capital and income.

142. At no time did Missouri tell Brevet Direct Lending that it could not and should not rely on its representations. To the contrary, in reckless or intentional, but in all events, bad faith disregard of its duties to it, Missouri actively sought to create the reasonable inference from its statements and representations that the operational risk to EngagePoint from the System Project not being completed was minimal and that the possibility of EngagePoint not continuing as the prime contractor was remote. Its statements and representations on December 5, 2014

were such that the logical and reasonable conclusion was that EngagePoint would be paid many millions of dollars by Missouri for work on the System Project and thus EngagePoint was sufficiently creditworthy to warrant the extension of the desired credit facility.

143. Missouri's representations were made, at a minimum, without exercising reasonable care in assessing their accuracy or limiting the scope of any reliance by advising Brevet Capital Management or Plaintiffs that they could not rely upon anything Missouri said in deciding whether to extend any credit facility to EngagePoint. Had Missouri exercised reasonable care and acted in good faith, it would have known that its representations were false or materially misleading in that they posed a substantial likelihood that they would turn out to be false, in whole or in material part. Further, had Missouri exercised reasonable care and acted in good faith, it would have known, if it in fact did not know, that its representations would be reasonably relied upon by Brevet Direct Lending in making any credit decisions regarding EngagePoint.

144. On the basis of Missouri's representations, Brevet Direct Lending extended the initial portion of the Investment to EngagePoint in December 2014. Thereafter from time to time Brevet Direct Lending increased the size of the Investment to address additional EngagePoint cash flow needs created by Missouri's total refusal to pay EngagePoint for work it completed. Currently, the total Investment exceeds $60 million.

145. No credit facility would have been extended but for the statements and representations that were made to Brevet Direct Lending by Missouri on December 5, 2014.

146. Brevet Direct Lending has suffered substantial damage as a result of Missouri's actions (including the actions of its agents and employees, including Nelson).

147. As a result of the conduct described above, EngagePoint has been unable to pay Brevet Direct Lending over $60 million of interest and principal that is past due on the Investment.

WHEREFORE, Brevet Direct Lending prays for judgment against the State of Missouri and Doug Nelson in his official capacity on Count III for fair and reasonable damages, punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT IV
Negligent Misrepresentation
By Brevet Direct Lending
Against Nelson in his Individual Capacity

148. The facts and allegations contained in the paragraphs 1-97 above are incorporated herein by reference.

149. Notwithstanding the incorporation of the facts and allegations contained in the paragraphs above, Count IV is pled in the alternative to Counts I, II, and III.

150. Nelson, ostensibly acting as the Commissioner of Administration but in reality acting outside of the scope of official duties and in service of his personal agenda, negligently induced Brevet Direct Lending to make the Investment in EngagePoint.

151. Once Nelson agreed to respond to the due diligence agenda topics submitted in advance of the December 5, 2014 conference call, he owed Brevet Direct Lending the duties of honesty, full disclosure, due care, and good faith.

152. Nelson breached those duties.

153. As detailed above, the ultimate thrust of Nelson's statements and representations, when taken in the context of the nature and circumstances of the December 5, 2014 conference

call, was that Nelson's present intent was to continue to use EngagePoint as the prime contractor for the System Project and to ensure that EngagePoint was fully paid for its work.

154. This conclusion was based on, *inter alia*, Nelson's representations that given EngagePoint's existing involvement with the System as the prime contractor, it would not be necessary for Missouri to solicit bids from other contractors or otherwise issue an RFP for completion of Phases II and III. Instead, that work would flow naturally to EngagePoint without the need for additional bidding.

155. At the time that Nelson made these representations, he knew or should have known that they were false or misleading, or at the very least, knew or should have known that there was a substantial possibility that they would turn out to be false.

156. Nelson's representations were made in bad faith and with malice. Either Nelson knew them to be false or misleading or Nelson purposely concealed and failed to disclose his ignorance of the facts upon which the representations were based.

157. Nelson made these representations intending Brevet Direct Lending to rely on them in deciding whether to extend a credit facility to EngagePoint.

158. Nelson urged Brevet Direct Lending to invest in EngagePoint so that other subcontractors and suppliers to the System Project would be paid by EngagePoint thereby ensuring that their work on the System Project and on other Missouri projects would be unaffected by Missouri's non-payment. Nelson further urged Brevet Direct Lending to invest in EngagePoint to ensure that EngagePoint had sufficient operating capital to continue the System Project. As Nelson had, prior to December 5, 2014, told EngagePoint that it needed to improve its access to liquidity, Nelson was familiar with EngagePoint's financial condition and knew or

should have known on December 5, 2014 that the revenue from Missouri on the System Project constituted the overwhelming majority of EngagePoint's capital and income.

159. At no time did Nelson tell Brevet Direct Lending that it could not and should not rely on his representations. To the contrary, in reckless or intentional, but in all events, bad faith disregard of his duties to Brevet Direct Lending, Nelson actively sought to create the reasonable inference from his statements and representations that the operational risk to EngagePoint from the System Project not being completed was minimal and that the possibility of EngagePoint not continuing as the prime contractor was remote. His statements and representations on December 5, 2014 were such that the logical and reasonable conclusion was that EngagePoint would be paid many millions of dollars by Missouri for work on the System Project and thus EngagePoint was sufficiently creditworthy to warrant the extension of the desired credit facility.

160. Nelson's representations were made, at a minimum, without exercising reasonable care in assessing their accuracy or limiting the scope of any reliance by advising Brevet Capital Management or Plaintiffs that they could not rely upon anything he said in deciding whether to extend any credit facility to EngagePoint. Had Nelson exercised reasonable care and acted in good faith, he would have known that his representations were false or materially misleading in that they posed a substantial likelihood that they would turn out to be false, in whole or in material part. Further, had Nelson exercised reasonable care and acted in good faith, he would have known, if he in fact did not know, that his representations would be reasonably relied upon by Brevet Direct Lending in making any credit decisions regarding EngagePoint.

161. Nelson was motivated by, *inter alia*, a personal desire to advance his own career and standing among various state and private actors, including IBM, at the expense of Brevet

Direct Lending and the best interests of Missouri. Nelson's conduct was willfully wrong and corrupt.

162. On the basis of Nelson's representations, Brevet Direct Lending extended the initial portion of the Investment to EngagePoint in December 2014. Thereafter from time to time, Brevet Direct Lending increased the size of the Investment to address additional EngagePoint cash flow needs created by the Defendants' total refusal to pay EngagePoint for work it completed. Currently, the total Investment exceeds $60 million.

163. No credit facility would have been extended but for the statements and representations that were made to Brevet Direct Lending by Nelson on December 5, 2014.

164. Brevet Direct Lending has suffered substantial damage as a result of Nelson's actions.

165. As a result of the conduct described above, EngagePoint has been unable to pay Brevet Direct Lending over $60 million of interest and principal that is past due on the Investment.

WHEREFORE, Brevet Direct Lending prays for judgment against Doug Nelson in his individual capacity on Count IV for fair and reasonable damages, punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT V
Unjust Enrichment
By Brevet Direct Lending
Against Missouri and Nelson in his Official Capacity

166. The facts and allegations contained in the paragraphs 1-97 above are incorporated herein by reference. For purposes of Count V, references to "Missouri" mean Missouri and/or Nelson in his official capacity.

167. Missouri, including its subdivisions, among them the Office of Administration, benefited from the Investment. In fact, Missouri induced Brevet Direct Lending to make the investment specifically to receive benefits from the Investment. Namely, Missouri wanted the Investment to be made so that EngagePoint could continue its work on the System Project and pay the subcontractors and suppliers that were also working on the System Project.

168. Missouri has benefited from these efforts and the subcontractor and supplier payments. Further, Missouri has knowingly accepted these benefits.

169. Missouri has not, however, paid for these benefits. Missouri was required to pay for these benefits by paying EngagePoint the amounts owed under the parties' contract, a substantial portion of which EngagePoint would have used to pay the subcontractors and suppliers.

170. Instead, because of Missouri's misconduct, EngagePoint was forced to use the Investment proceeds to pay, *inter alia*, the subcontractors and suppliers. In turn, EngagePoint has been unable to repay the Investment because Missouri continues to refuse to pay EngagePoint the amounts it is owed. Thus, the benefits to Missouri from EngagePoint's efforts and the subcontractor and supplier payments were paid for and secured by the Investment.

171. Missouri has been unjustly enriched to Brevet Direct Lending's detriment by knowingly accepting these benefits without paying for them.

WHEREFORE, Brevet Direct Lending prays for judgment against the State of Missouri and Doug Nelson in his official capacity on Count V for fair and reasonable damages, for punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT VI
42 U.S.C. §§ 1981, 1983
By Brevet Direct Lending
Against Nelson in his Individual Capacity

172. The facts and allegations contained in the paragraphs 1-97 and 114-130 above are incorporated herein by reference.

173. Count VI asserts, through 42 U.S.C. § 1983, claims for violations of the "make and enforce contracts" and "equal benefits" clauses of 42 U.S.C. § 1981.

174. Brevet Direct Lending has a contractual and business relationship with EngagePoint.

175. The contractual relationship is governed by the Investment, the development of which was in material part motivated by Brevet Direct Lending's desire to help EngagePoint vindicate its ability to enjoy the benefits of its contract with Missouri.

176. Nelson's misconduct has impaired, and continues to impair, the Investment in that, as previously detailed, Nelson's misconduct has rendered EngagePoint unable to pay the contractual amounts due under the Investment. As a result, Brevet Direct Lending has been deprived of the enjoyment of all benefits, privileges, terms, and conditions of its contractual relationship with EngagePoint.

177. As further set forth above, Nelson's misconduct, including in particular his decisions to cause EngagePoint to be taken off Phase II of the System Project and then terminated as prime contractor, was motivated at least in part racial animus. Nelson harbored animus against EngagePoint's Asian-Indian American managers, including then-owner and CEO Pradeep Goel. Nelson represented that the reason he caused EngagePoint's termination was to get away from Goel. Immediately after causing the termination, Nelson hired away a white male employee of EngagePoint to oversee IBM's work as EngagePoint's replacement.

178. Brevet Direct Lending is further informed and believes that EngagePoint's Asian-Indian American managers and owners believe they were discriminated against by Nelson, particularly in contrast to others, through Nelson's statements and pattern of behavior.

179. On information and belief, Nelson also discriminated against Brevet Direct Lending directly by making fraudulent and/or false or materially misleading representations to it because of its association and work with EngagePoint's Asian-Indian American management.

180. Nelson's misconduct has also deprived EngagePoint and its Asian-Indian American management team of the full and equal benefits of the law.

181. This deprivation has caused a direct, discriminatory injury to Brevet Direct Lending and thus deprived it of the full and equal benefits of the law. As explained above, Brevet Direct Lending is an impact lender and maintains a portfolio of impact transactions, which includes the Investment. Nelson's misconduct has deprived Brevet Direct Lending of the full opportunity to work and partner with EngagePoint and Brevet Direct Lending has thus lost the full associational, economic, and cultural benefits of a relationship with the Asian-Indian American members of EngagePoint's management team and ownership. Brevet Direct Lending has also been injured by being deprived of a business environment free of racial animus and discrimination.

182. At all relevant times, Nelson acted under color of state law and his job and title as Commissioner of the Office of Administration for the State of Missouri.

WHEREFORE, Brevet Direct Lending prays for judgment against Doug Nelson in his individual capacity on Count VI for fair and reasonable damages, for punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT VII
42 U.S.C. § 2000d
By Brevet Direct Lending
Against Missouri and Nelson in his Official Capacity

183. The facts and allegations contained in the paragraphs 1-113 above are incorporated herein by reference. For purposes of Count VII, references to "Missouri" mean Missouri and/or Nelson in his official capacity.

184. Missouri, including its subdivisions, among them the Office of Administration, has received and continues to receive substantial federal funds to pay for the System Project.

185. The System Project is therefore subject to Title VI of the Civil Rights Act of 1964, including 42 U.S.C. § 2000d. By virtue of, among other things, 42 U.S.C. § 2000d(a), Missouri may be sued in federal court for violations of Section 2000d.

186. Brevet Direct Lending was and is an intended beneficiary of the federal funds at issue in that Missouri represented, in words or substance, that the funds would be used to pay EngagePoint and thereby enable EngagePoint to repay the Investment.

187. Brevet Direct Lending also was and is an intended beneficiary of these funds because Brevet Direct Lending was partnering with a minority-owned business, EngagePoint, to help it serve as a contractor for the System Project. As EngagePoint's contract with Missouri—which was approved by CMS—makes clear, one objective of the contract was to award work to qualified minority-owned businesses. (*See, e.g.*, Ex. A at Exhibit E.)

188. Brevet Direct Lending, through the Investment, also was and is a participant in the federally funded System Project.

189. As set forth above, Missouri, through Nelson and potentially other employees and agents of Missouri, discriminated against EngagePoint's Asian-Indian American management on the basis of race.

190. As further set forth above, this conduct caused a direct, discriminatory injury to Brevet Direct Lending. As previously detailed, Brevet Direct Lending is an impact lender and maintains a portfolio of impact transactions, which includes the Investment. Missouri's misconduct has thus deprived Brevet Direct Lending of the full opportunity to work and partner with EngagePoint and Brevet Direct Lending have thus lost the full associational, economic, and cultural benefits of a relationship with the Asian-Indian American members of EngagePoint's management team. Brevet Direct Lending has also been injured by being deprived of a business environment free of racial animus and discrimination.

191. On information and belief, Brevet Direct Lending was also the direct target of discrimination by Missouri, through Nelson and potentially other of Missouri's employees and agents, based on its association and work with EngagePoint's Asian-Indian American management. This discrimination was manifested by Missouri's fraudulent and/or false or materially misleading representations to Brevet Direct Lending during the December 5, 2014 conference call. As detailed above, these representations caused Brevet Direct Lending substantial injury.

WHEREFORE, Brevet Direct Lending prays for judgment against the State of Missouri and Doug Nelson in his official capacity on Count VII for fair and reasonable damages, for punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT VIII
Fraudulent Inducement
By FCS
Against Missouri and Nelson in his Official and Individual Capacities

192. The facts and allegations contained in the paragraphs 1-97 above are incorporated herein by reference.

193. Notwithstanding the incorporation of the facts and allegations contained in the paragraphs above, Count VIII is pled in the alternative to Count IX. For purposes of Count VIII, references to "Missouri" mean Missouri and/or Nelson in his official capacity and references to Nelson mean Nelson in his individual capacity.

194. Missouri, acting through its employees and agents, and/or alternatively, Nelson fraudulently induced FCS to contractually bind itself to act as administrative agent in connection with the Investment.

195. Once Missouri and/or, alternatively, Nelson agreed to respond to the due diligence agenda topics submitted in advance of the December 5, 2014 conference call, Missouri and/or, alternatively, Nelson owed FCS the duties of honesty, full disclosure, due care, and good faith.

196. Missouri and/or, alternatively, Nelson breached these duties.

197. As detailed above, the ultimate thrust of Missouri's and/or, alternatively, Nelson's statements and representations, when taken in the context of the nature and circumstances of the December 5, 2014 conference call, was that Missouri's and/or, alternatively, Nelson's present intent was to continue to use EngagePoint as the prime contractor for the System Project and to pay EngagePoint fully for its work.

198. This conclusion was based on, *inter alia*, Missouri's and/or, alternatively, Nelson's representations that given EngagePoint's existing involvement with the System Project as the prime contractor, it would not be necessary for Missouri or Nelson to solicit bids from other contractors or otherwise issue an RFP for completion of Phases II and III. Instead, that work would flow naturally to EngagePoint without the need for additional bidding.

199. Missouri and/or, alternatively, Nelson made these representations knowing they were false at the time they were made or at the very least were intentionally misleading.

200. Missouri and/or, alternatively, Nelson made these representations intending FCS to rely on them in deciding whether to participate in extending a credit facility to EngagePoint.

201. Missouri and/or, alternatively, Nelson urged FCS to invest in EngagePoint so that other subcontractors and suppliers to the System Project would be paid by EngagePoint thereby ensuring that their work on the System Project and on other Missouri projects would be unaffected by Missouri's non-payment. Missouri and/or, alternatively, Nelson further urged FCS to invest in EngagePoint to ensure that EngagePoint had sufficient operating capital to continue the System Project. As Missouri and Nelson had, prior to December 5, 2014, told EngagePoint that it needed to improve its access to liquidity, Missouri and Nelson were familiar with EngagePoint's financial condition and knew on December 5, 2014 that the revenue from Missouri on the System Project constituted the overwhelming majority of EngagePoint's capital and income.

202. At no time did Missouri and/or, alternatively, Nelson tell FCS that it could not and should not rely on Missouri's and/or Nelson's representations. To the contrary, Missouri and/or, alternatively, Nelson actively sought to create the reasonable inference from their statements and representations that the operational risk to EngagePoint from the System Project not being completed was minimal and that the possibility of EngagePoint not continuing as the prime contractor was remote. Missouri's and/or Nelson's statements and representations on December 5, 2014 were such that the logical and reasonable conclusion was that EngagePoint would be paid many millions of dollars by Missouri for work on the System Project.

203. Missouri's and/or, alternatively, Nelson's false representations were made maliciously and in bad faith for the purpose of inducing FCS to participate in the extension of a credit facility to EngagePoint.

204. On the basis of Missouri's and/or, alternatively, Nelson's representations, FCS agreed to serve as administrative agent and servicer of the credit facility in exchange for payment by EngagePoint of a $4,000 monthly fee. FCS would not have so agreed but for the representations made to FCS by Missouri and/or, alternatively, Nelson on December 5, 2014.

205. FCS has suffered substantial damage from Missouri's and/or, alternatively, Nelson's false and misleading representations.

206. As a result of the conduct described above, EngagePoint has been unable to pay FCS over $80,000 in fees. The amount past due continues to accrue on a monthly basis.

WHEREFORE, FCS prays for judgment against the State of Missouri and Doug Nelson in his official capacity and/or, alternatively, individual capacity on Count VIII for fair and reasonable damages, punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT IX
Negligent Misrepresentation
By FCS
Against Missouri and Nelson in his Official and Individual Capacities

207. The facts and allegations contained in the paragraphs 1-97 above are incorporated herein by reference.

208. Notwithstanding the incorporation of the facts and allegations contained in the paragraphs above, Count IX is pled in the alternative to Count VIII. For purposes of Count IX, references to "Missouri" mean Missouri and/or Nelson in his official capacity and references to Nelson mean Nelson in his individual capacity.

209. Missouri, acting through its employees and agents, and/or, alternatively, Nelson fraudulently induced FCS to contractually bind itself to act as administrative agent in connection with the Investment.

210. Once Missouri and/or, alternatively, Nelson agreed to respond to the due diligence agenda topics submitted in advance of the December 5, 2014 conference call, Missouri and/or, alternatively, Nelson owed FCS the duties of honesty, full disclosure, due care, and good faith.

211. Missouri and/or, alternatively, Nelson breached these duties.

212. As detailed above, the ultimate thrust of Missouri's and/or, alternatively, Nelson's statements and representations, when taken in the context of the nature and circumstances of the December 5, 2014 conference call, was that Missouri's and/or Nelson's present intent was to continue to use EngagePoint as the prime contractor for the System Project and to pay EngagePoint fully for its work.

213. This conclusion was based on, *inter alia*, Missouri's and/or, alternatively, Nelson's representations that given EngagePoint's existing involvement with the System as the prime contractor, it would not be necessary for Missouri or Nelson to solicit bids from other contractors or otherwise issue an RFP for completion of Phases II and III. Instead, that work would flow naturally to EngagePoint without the need for additional bidding.

214. At the time that Missouri and/or, alternatively, Nelson made these representations, Missouri and/or, alternatively, Nelson knew or should have known that they were false or misleading, or at the very least, knew or should have known that there was a substantial possibility that they would turn out to be false.

215. Missouri's and/or, alternatively, Nelson's representations were made in bad faith and with malice. Either Missouri and/or, alternatively, Nelson knew them to be false or misleading or Missouri and/or, alternatively, Nelson purposely concealed and failed to disclose ignorance of the facts upon which the representations were based.

216. Missouri and/or, alternatively, Nelson made these representations intending FCS to rely on them in deciding whether to participate in extending a credit facility to EngagePoint.

217. Missouri and/or, alternatively, Nelson urged FCS to invest in EngagePoint so that other subcontractors and suppliers to the System Project would be paid by EngagePoint thereby ensuring that their work on the System Project and on other Missouri projects would be unaffected by Missouri's non-payment. Missouri and/or, alternatively, Nelson further urged FCS to invest in EngagePoint to ensure that EngagePoint had sufficient operating capital to continue the System Project. As Missouri and Nelson had, prior to December 5, 2014, told EngagePoint that it needed to improve its access to liquidity, Missouri and Nelson were familiar with EngagePoint's financial condition and knew or should have known on December 5, 2014 that the revenue from Missouri on the System Project constituted the overwhelming majority of EngagePoint's capital and income.

218. At no time did Missouri and/or, alternatively, Nelson tell FCS that it could not and should not rely on Missouri's and/or Nelson's representations. To the contrary, Missouri and/or, alternatively, Nelson actively sought to create the reasonable inference from their statements and representations that the operational risk to EngagePoint from the System Project not being completed was minimal and that the possibility of EngagePoint not continuing as the prime contractor was remote. Missouri's and/or, alternatively, Nelson's statements and representations on December 5, 2014 were such that the logical and reasonable conclusion was

that EngagePoint would be paid many millions of dollars by Missouri for work on the System Project.

219. Missouri's and/or, alternatively, Nelson's representations were made, at a minimum, without exercising reasonable care in assessing their accuracy or limiting the scope of any reliance by advising Brevet Capital Management or Plaintiffs that they could not rely upon anything that Missouri and/or, alternatively, Nelson said in deciding whether to extend any credit facility to EngagePoint. Had Missouri and/or, alternatively, Nelson exercised reasonable care and acted in good faith, Missouri and/or, alternatively, Nelson would have known that the representations were false or materially misleading in that they posed a substantial likelihood that they would turn out to be false, in whole or in material part. Further, had Missouri and/or, alternatively, Nelson exercised reasonable care and acted in good faith, Missouri and/or, alternatively, Nelson would have known that the representations would be reasonably relied upon by FCS in making any decisions regarding EngagePoint.

220. On the basis of Missouri's and/or, alternatively, Nelson's representations, FCS agreed to serve as administrative agent and servicer of the credit facility in exchange for payment by EngagePoint of a $4,000 monthly fee. FCS would not have so agreed but for the representations made to FCS by Missouri and/or, alternatively, Nelson on December 5, 2014.

221. FCS has suffered substantial damage from Missouri's and/or, alternatively, Nelson's false and misleading representations.

222. As a result of the conduct described above, EngagePoint has been unable to pay FCS over $80,000 in fees. The amount past due continues to accrue on a monthly basis.

WHEREFORE, FCS prays for judgment against the State of Missouri and Doug Nelson in his official capacity and/or, alternatively, individual capacity on Count IX for fair and reasonable damages, punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT X
42 U.S.C. §§ 1981, 1983
By FCS
Against Nelson in his Individual Capacity

223. The facts and allegations contained in the paragraphs 1-97 and 114-130 above are incorporated herein by reference.

224. Count X asserts, through 42 U.S.C. § 1983, claims for violations of the "make and enforce contracts" and "equal benefits" clauses of 42 U.S.C. § 1981.

225. FCS has a contractual and business relationship with EngagePoint.

226. The contractual relationship is governed by the FCS's contractual agreement to serve as administrative agent and service in connection with the Investment, an agreement which was in material part motivated by FCS's desire to help EngagePoint vindicate its ability to enjoy the benefits of its contract with Missouri.

227. Nelson's misconduct has impaired, and continues to impair, FCS's contractual relationship with EngagePoint in that, as previously detailed, Nelson's misconduct has rendered EngagePoint unable to pay FCS over $80,000 in fees due under the parties' contract. As a result, FCS has been deprived of the enjoyment of all benefits, privileges, terms, and conditions of its contractual relationship with EngagePoint.

228. As further set forth above, Nelson's misconduct, including in particular his decisions to cause EngagePoint to be taken off Phase II of the System Project and then terminated as prime contractor, was motivated at least in part racial animus. Nelson harbored animus against EngagePoint's Asian-Indian American managers, including then-owner and CEO Pradeep Goel. Nelson represented that the reason he caused EngagePoint's termination was to

get away from Goel. Immediately after causing the termination, Nelson hired away a white male employee of EngagePoint to oversee IBM's work as EngagePoint's replacement.

229. FCS is further informed and believes that EngagePoint's Asian-Indian American managers and owners believe they were discriminated against by Nelson, particularly in contrast to others, through Nelson's statements and pattern of behavior.

230. On information and belief, Nelson also discriminated against FCS directly by making fraudulent and/or false or materially misleading representations to it because of its association and work with EngagePoint's Asian-Indian American management.

231. Nelson's misconduct has also deprived EngagePoint and its Asian-Indian American management team of the full and equal benefits of the law.

232. This deprivation has caused a direct, discriminatory injury to FCS and thus deprived it of the full and equal benefits of the law. Specifically, FCS has been deprived of the full opportunity to work and partner with EngagePoint and FCS has thus lost the full associational, economic, and cultural benefits of a relationship with the Asian-Indian American members of EngagePoint's management team. FCS has also been injured by being deprived of a business environment free of racial animus and discrimination.

233. At all relevant times, Nelson acted under color of state law and his job and title as Commissioner of the Office of Administration for the State of Missouri.

WHEREFORE, FCS prays for judgment against Doug Nelson in his individual capacity on Count X for fair and reasonable damages, for punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

COUNT XI
42 U.S.C. § 2000d
By FCS
Against Missouri and Nelson in his Official Capacity

234. The facts and allegations contained in the paragraphs 1-113 above are incorporated herein by reference. For purposes of Count XI, references to "Missouri" mean Missouri and/or Nelson in his official capacity.

235. Missouri, including its subdivisions, among them the Office of Administration, has received and continues to receive substantial federal funds to pay for the System Project.

236. The System Project is therefore subject to Title VI of the Civil Rights Act of 1964, including 42 U.S.C. § 2000d. By virtue of, among other things, 42 U.S.C. § 2000d(a), Missouri may be sued in federal court for violations of Section 2000d.

237. FCS was and is an intended beneficiary of the federal funds at issue in that Missouri represented, in words or substance, that the funds would be used to pay EngagePoint and thereby enable EngagePoint to pay the amounts due to FCS under the Investment.

238. FCS also was and is an intended beneficiary of these funds because FCS was partnering with a minority-owned business, EngagePoint, to help it serve as a contractor for the System Project. As EngagePoint's contract with Missouri—which was approved by CMS—makes clear, one objective of the contract was to award work to qualified minority-owned businesses. (*See, e.g.*, Ex. A at Exhibit E.)

239. FCS, through its work as administrative agent and servicer of the Investment, also was and is a participant in the federally funded System Project.

240. As set forth above, Missouri, through Nelson and potentially other employees and agents of Missouri, discriminated against EngagePoint's Asian-Indian American management on the basis of race.

241. As further set forth above, Nelson's misconduct, including in particular his decisions to cause EngagePoint to be taken off Phase II of the System Project and then terminated as prime contractor, was motivated at least in part racial animus. Nelson harbored animus against EngagePoint's Asian-Indian American managers, including then-owner and CEO Pradeep Goel. Nelson represented that the reason he caused EngagePoint's termination was to get away from Goel. Immediately after causing the termination, Nelson hired away a white male employee of EngagePoint to oversee IBM's work as EngagePoint's replacement.

242. On information and belief, FCS was also the direct target of discrimination by Missouri, through Nelson and potentially other of Missouri's employees and agents, based on its association and work with EngagePoint's Asian-Indian American management. This discrimination was manifested by Missouri's fraudulent and/or false or materially misleading representations to FCS during the December 5, 2014 conference call. As detailed above, these representations caused FCS substantial injury.

WHEREFORE, FCS prays for judgment against the State of Missouri and Doug Nelson in his official capacity on Count XI for fair and reasonable damages, for punitive damages, pre-judgment interest, attorney's fees, costs, and for such other relief as is just and proper.

Dated: May 26, 2017

Brevet Direct Lending – Short Duration Fund, L.P. and FCS Advisors, LLC

By: */s/ John F. Medler, Jr.*
One of their attorneys

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